should offences of this nature be committed in the future, in this Court, by persons in the same or similar position as the first defendant, similar leniency will certainly not be extended.

Order accordingly.

TENGKU JAFFAR BIN TENGKU AHMAD

v.

KARPAL SINGH

HIGH COURT, KOTA BHARU
DATO' IDRIS BIN YUSOFF J
[CIVIL SUIT NO. 22-165-1992]
29 MAY 1993

PRACTICE AND PROCEDURE: Pleadings - Defendant put in unconditional appearance - Whether defendant precluded from applying to strike out writ and statement of claim - Locus standi - Jurisdiction of Court - Sedition Act 1948 - Federal Constitution.

DEFAMATION: Libel and slander - Locus standi - Private interest - Whether defamatory words referred to plaintiff - Reference to Rulers - Whether defamed Malay race.

The plaintiff filed an action against the defendant seeking;

(i) a declaration that the statement or words uttered by defendant as appeared in the Berita Harian dated 14 December 1992 tantamount to seditious libel,
(ii) delcaration that it is sedition to degrade any Ruler or Sultan in the way the defendant did,
(iii) by degrading the Ruler the defendant has indirectly degraded the Malays,
(iv) a declaration that the Court has unlimited powers to grant a declaration and injunction if requested by any person if the Sultan is reluctant to commence legal proceedings, any subject can do so otherwise the Malay subjects or citizens have no remedy for injustice and,
(v) injunction to restrain the defendant from further speaking and publishing the said or any similar sedition.

The defendant applied to strike out the plaintiff's writ of summons and statement of claim under O. 18 r. 19 of the Rules of the High Court 1980 and/or under the inherent jurisdiction of the Court on the grounds that the plaintiff lacked the necessary *locus standi* to institute these proceedings or the same were misconceived and devoid of any basis or merits.

Held:

[1] To possess *locus standi* it requires that the applicant should be seeking to protect or

vindicate an interest of his own. The plaintiff purely on the ground of being of a Malay race and a subject of the Sultan of Kelantan does not clothe him with the necessary *locus standi* since there does not seem to be present any form of interference of his private right beyond that of any other Malays and subjects of the Sultan of Kelantan, a qualification which is essentially required to be proved.

[2] In the context of the words uttered by the defendant there is nothing to show that such utterance was intended to or meant for the plaintiff if at all the words uttered tantamount to defamatory remarks. It is trite law that the person who can maintain an action against the defendant is the one who is defamed and not any other individual as an action for defamation is purely a personal one and neither can it be assigned.

[3] The issues which related to the alleged criminality do not come within the purview of a Civil Court as otherwise the Civil Court might be accused of intruding into the domain of the Criminal Court. In the instant case it is clear that the plaintiff has made a complaint to a wrong forum.

[4] The power to make a declaration under O. 15 r. 16 is discretionary and to qualify for a declaration the plaintiff must show not only it is not inequitable for the Court to grant but also it is not contrary to the accepted principle upon which the Court exercises its discretion.

[5] The defendant in the instant case is not challenging the validity of the writ or service thereof but proceeds on the premises that the plaintiff has no *locus standi*, as such he need not file conditional appearance.

[Application allowed with costs].

Cases referred to:

Tractors (M) Ltd. v. Tio Chee Hing [1975] 2 MLJ 1 ***(cit)***

Sim Kie Chon v. Superintendent of Pudu Prison & Ors. [1985] 2 CLJ 449 / [1985] 2 MLJ 385 ***(foll)***

Boyce v. Paddington Borough Council [1903] 1 Ch 109 ***(cit)***

Karpal Singh v. Sultan of Selangor [1987] CLJ 342 / [1988] 1 MLJ 64 ***(cit)***

Government of Malaysia v. Lim Kit Siang [1988] 1 CLJ 219 / [1988] 2 MLJ 12 ***(cit)***

Lim Cho Hock v. Government of State of Perak & Ors. [1980] 1 MLJ 148 ***(cit)***

Tan Sri Hj. Othman Saat v. Mohamed b. Ismail [1982] 2 MLJ 177 ***(cit)***

Australian Conservation Foundation Incorporated v. Commonwealth of Australia & Ors. [1979-80] 28 ALR 257 ***(cit)***

Barnard v. National Dock Labour Board 1953] 2 QB 18; [1953] 1 AER 1113 ***(dist)***

Atip b. Ali v. Josephine Doris Nunis & Anor. [1986] 1 CLJ 320 / [1987] 1 MLJ 82 ***(cit)***

Knupffer v. London Express Newspaper Ltd. [1944] AC 116; [1944] 1 AER 495 ***(cit)***

Bruce v. Odhams Press, Ltd. [1936] 1 KB 697 ***(cit)***

Gouriet v. Union of Post Office Workers & Ors. [1977] 3 AER 70 ***(cit)***

Legislation referred to:

Federal Constitution, Article 145(3)
Internal Security Act
Rules of the High Court 1980, O. 15 r. 16, O. 18 r. 19
Sedition Act 1948, ss. 4(1), 5
Supreme Court Rules, O. 53 (UK)

Other sources referred to:

Mallal's Supreme Court Practice, 2nd Edn., para 12/1/3

For the plaintiff - Wan Mustapha bin Haji Ali; M/s. Wan Mustapha & Co.

For the defendant - Karpal Singh; M/s. Karpal Singh & Co.

JUDGMENT

Idris Bin Yusoff J:

Mr. Karpal Singh the defendant in a civil suit filed by the plaintiff applies to strike out the writ of summons dated 16 December 1993 together with the statement of claim pursuant to O. 18 r. 19 of the Rules of the High Court 1980 and/or under the inherent jurisdiction of the Court on the following grounds:

(a) the plaintiff has no *locus standi* to bring the said suit. The said suit by the plaintiff is not maintainable against the defendant;
(b) the issues raised which relate to alleged criminality do not come within the jurisdiction of the Honourable Court;
(c) The Attorney-General and no one else is vested under the provisions of Article 145(3) and section 5 of the Sedition Act 1948 (Act 15) with the powers to institute proceedings under the Sedition Act;
(d) the said suit is scandalous, frivolous, vexatious and/or an abuse of the process of the Honourable Court;
(e) the alleged publication does not amount to defamation or sedition. There is no cause of action against the defendant.

He also seeks an order that all further proceedings in respect of the said suit be stayed pending the disposal of this application.

In his statement of claim the plaintiff seeks a total of 4 declarations coupled with an injunction which are couched in the following terms:

(a) A Court declaration that the statement or words uttered by the defendant Encik Karpal Singh as appeared in the Berita Harian dated 14 December 1992 tantamount to seditious libel.
(b) A Court declaration that it is sedition to degrade any Ruler or Sultan in the way the defendant did.
(c) A declaration that by degrading the Ruler the defendant Encik Karpal Singh has indirectly degraded the Malays.
(d) A declaration that the Court has unlimited powers to grant a declaration and injunction if requested by any person if the Sultan is reluctant to commence legal proceedings, any subject can do so otherwise the Malay subjects or citizens have no remedy for injustice.
(e) An injunction to restrain the defendant Encik Karpal Singh from further speaking and publishing the said or any similar sedition.

This suit arises out of a press statement allegedly made by the defendant which was published in the issue of Berita Harian of 14 December 1992. The statement which is alleged to be seditious and libelous is published in the following words:

> Akta Keselamatan Dalam Negeri (ISA) boleh digunakan untuk menahan sesiapa saja, termasuk raja kerana mereka tidak terkecuali daripada bidang kuasa berkenaan, kata Ahli Parlimen Jelutong Karpal Singh.
>
> Beliau berkata, Seksyen 8(1) Akta berkenaan menyebut, Menteri Dalam Negeri boleh menahan sesiapa saja untuk tempoh tidak melebihi dua tahun jika tindakan itu dapat menghalang individu terbabit mengancam keselamatan negara.
>
> Pengunaan perkataan 'sesiapa saja' turut membabitkan raja. Bagaimanapun, DAP menentang penahanan mengikut ISA kerana ia dibuat tanpa perbicaraan," katanya dalam sidang akhbar di sini, hari ini.

It is alleged by the plaintiff that by "such impertinent slander as aforesaid the defendant is insinuating that most Rulers, if not all, are capable of committing offences under the Internal Security Act and has indirectly classified that the Malays "are hooligans". The plaintiff further alleges that "not only has Mr. Karpal Singh committed criminal libel under the Sedition Act but he is also liable civilly for libel and slander against the plaintiff who being of Malay race and a subject of the Sultan of Kelantan".

The defendant in support of his application to strike out the suit maintains that to institute any proceedings in the Court of law the plaintiff must possess the necessary standing (*locus standi*), whereas the circumstances of this case show that the plaintiff possesses none. The allegations by the plaintiff that the defendant is liable for libel and slander just because the plaintiff being of a Malay race and a subject of the Sultan of Kelantan is misconceived and devoid of any basis or merit.

It must be made known from the outset that the Court is not unmindful of the ruling that the power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic one [see *Tractors (M) Ltd. v. Tio Chee Hing* [1975] 2 MLJ 1 (PC)] but however has taken note that over the years there has already been well established the principle governing application made pursuant to O. 18 r. 19 of the Rules of the High Court 1980. As stated in *Sim Kie Chon v. Superintendent of Pudu Prison & Ors.* [1985] 2 MLJ 385:

> The principle governing the striking out of pleadings is clear in that it is only in plain and obvious cases that recourse should be had to the summary process under O. 18 r. 19 of the Rules of the High Court 1980: "the summary procedure under this Rule can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'." (Attorney-General of *Duchy of Lancaster v. L & N.W. Railway Co.*) **Supreme Court Practice** 1985).
>
> On an application to strike out the statement of claim and dismiss the action, the right course for the Court is to strike out the claim if it is satisfied that a claim does not disclose a reasonable cause of action.

I shall now deal with the grounds of the application.

Ground (a) - The question of *locus standi*. In Malaysia the question of *locus standi* has been the subject of a series of judicial interpretation after considering a good number of English authorities - it dates back to the English case of *Boyce v. Paddington Borough Council* [1903] 1 CH 109. In *Karpal. Singh v. Sultan of Selangor* [1988] 1 MLJ 64, Abdul Hamid CJ (Malaya) (as

he then was) elaborates the concept of and the law on *locus standi*. He firmly says "an action may not be brought to Court by a stranger to it". He also explains the various approaches that may be adopted by the Court in deciding the question of *locus standi*. One approach is to ask whether the plaintiff has "a cause of action". Another approach is to determine whether the plaintiff can establish a "right" which the Court may declare. Yet another approach is to require the plaintiff to demonstrate "a special injury" resulting from the subject matter of the declaration. A fourth approach requires the plaintiff to have an "interest" in the subject matter of the declaration to be litigated. A final approach leaves the question of standing to be determined by the Court in the exercise of its discretion.

The concept of and the law on *locus standi* were considered in great detail by the Supreme Court in *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12. In that case the Supreme Court traced the development of such law in England starting with *Boyce's* case followed by a number of other cases which evinced a clear need to liberalise such law, and which finally culminated in the introduction of O. 53 of the United Kingdom Supreme Court Rules. The position in Malaysia is somewhat different and the Supreme Court in *Government of Malaysia's* case by a majority of 3 - 2 decided not "to depart from the rule of *locus standi* accepted by the highest Court in England prior to O. 53". This is because O. 53 has not been accepted in Malaysia and the Court has therefore to fall back on *Boyce's* case.

Buckley J. in *Boyce's* case stated as follows:

> A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with (e.g. where an obstruction is so placed in a highway that the owner of premises abutting upon the highway is specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway); and, secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right.

The Supreme Court also considered the two landmark cases in Malaysia on *locus standi* namely *Lim Cho Hock v. Government of State of Perak and Ors.* [1980] 1 MLJ 148 and T*an Sri Hj. Othman Saat v. Mohamed b. Ismail* [1982] 2 MLJ 177 in which it was said in the later case;

> The sensible approach in the matter of *locus standi* in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of contractual or a proprietary right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice.

In the above two cases the Court held that the plaintiffs have the necessary *locus standi* on the basis that they had genuine private interest to be furthered and protected.

As appears to me from these two cases to possess *locus standi* it requires that the applicant should be seeking to protect or vindicate an interest of his own.

In this suit it is alleged by the plaintiff that by using the words "sesiapa sahaja" the insinuation, in that context, is not only levelled at the Rulers but is indirectly categorising the Malays as capable of committing offences under the ISA and he the plaintiff has a cause of action against the defendant for libel and slander, apart from the latter being liable for sedition as the plaintiff is of a Malay race and a subject of the Sultan of Kelantan.

Since it was said in *Karpal Singh v. Sultan of Selangor* "an action may not be brought to Court by a stranger", it is therefore contended by the defendant that the position of the plaintiff is akin to that of a stranger and thereby giving him no standing to pursue the alleged claim.

In my judgment having regard to the cases heretofore decided and following the judgment of Gibbs J in *Australian Conservation Foundation Incorporated v. Commonwealth of Australia and Ors.* [1979 - 80] 28 ALR 257 which says:

> A belief, however strongly felt, that the law generally or a particular law should be observed or **that conduct of a particular kind should be prevented,** does not suffice to give its possessor *locus standi*.
> (emphasis added),

I hold that the plaintiff, purely on the ground of being of a Malay race and a subject of the Sultan

of Kelantan does not clothe him with the necessary *locus standi* since there does not seem to be present any form of interference of his private right beyond that of any other Malays and subjects of the Sultan of Kelantan, a qualification which is essentially required to be proved.

One of the authorities sent in by Dato' Wan Mustapha Counsel for the plaintiff, (though was not referred to at the hearing) is *Barnard v. National Dock Labour Board* [1953] 2 QB 18 a decision of the English Court of Appeal which deals with the question of declaration. I find that this authority is of no assistance to the plaintiff as it touches upon the question of discretion of the Court to grant a declaration sought for but it does not resolve the question of *locus standi* as the plaintiffs were the persons directly affected in the matter.

In the circumstances I hold that the plaintiff has no *locus standi* to bring this suit against the defendant.

On the plaintiff's allegations of libel and slander being committed against him, it is clear to me that in the context of the words uttered by the defendant there is nothing to show that such utterance was intended to or meant for the plaintiff if at all the words uttered tantamount to defamatory remarks. It is trite law that the person who can maintain an action against the defendant is the one who is defamed and not any other individual as an action for defamation is purely a personal one and neither can it be assigned. The right of a person to bring an action for defamation has been amply and lucidly discussed by Wan Yahya J (as he then was) in *Atip b. Ali v. Josephine Doris Nunis & Anor.* [1987] 1 MLJ 82. A number of authorities both English and Indian were referred to and highlighted by His Lordship which I consider is more than sufficient to support the defendant's averment that the suit filed by the plaintiff is not maintainable against him. The plaintiff in this suit fails to show that the alleged defamatory words bear reference to him - it is not sufficient if the words referred to a class of persons or to a particular race as was said in *Knupffer v. London Express Newspaper, Ltd.* [1944] 1 AER 495:

> It was held when defamatory words are written or spoken of a class of persons it is not open to a member of that class to say that the words were spoken of him unless there was something to show that the words about the class refer to him as an individual. In this case there was nothing to show that the words referred to the appellant as an individual and his his claim, therefore, failed.

See also *Bruce v. Odhams Press, Limited* [1936] 1 KB 697.

Grounds (b) & (c) - I propose to deal with these two grounds simultaneously as they bear some nexus - one concerning the jurisdiction of the Court and the other the power to institute proceedings in Court.

By the very nature of the claim the plaintiff is alleging that a criminal offence under the Sedition Act 1948 has been committed by the defendant. Section 4(1) of the Act *inter alia* states that an offence is committed if a person:

> (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
> (b) utters any seditious words.

The words "seditious" and "seditious tendency" have been defined in the Act. Under s. 5 of the Act "No person shall be prosecuted for an offence under s. 4 without the written consent of thePublic Prosecutor. In such written consent the Public Prosecutor may designate any Court within Malaysia to be the Court of trial." And powers of the Public Prosecutor, who is the Attorney General, to institute criminal proceedings are set out in Article 145(3) of the Federal Constitution as follows:

> (3) The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah Court, a native Court or a court-martial.

Again on reference to *Government of Malaysia v. Lim Kit Siang* there is the judgment of Salleh Abas LP (as he then was) which goes as follows:

> It is unacceptable that criminal law should be enforced by means of civil proceedings for a declaration when the Court's power to grant that remedy is only at the discretion of the Court. Jurisdiction of a Criminal Court is fixed and certain. The standard of proof in a criminal case is different from that required in a civil case and moreover the Attorney-General is the guardian of public interest and as the Public Prosecutor, he, not the Court, is in control of all prosecutions.

In the same case Abdul Hamid CJ Malaya (as he then was) says at page 32:

> ... my view is clear in that fundamentally where a statute creates a criminal offence by prescribing a penalty for the breach of it but not providing a civil remedy - the general rule is that no private individual can bring an action to enforce the criminal law, either by way of an injunction or by a declaration or by damages. I am inclined to the view that it should be left to the Attorney-General to bring an action, either of his own motion or at the instance of a member of the public who "relates" the facts to him ...

In the circumstances I agree with Mr. Karpal Singh that the issues which relate to the alleged criminality do not come within the purview of a civil court as otherwise the civil court might be accused of intruding into the domain of the criminal court. In the instant case it is clear that the plaintiff has made a complaint to a wrong forum.

Ground (e) - it is submitted by the defendant that the alleged publication does not amount to defamation or sedition and it does not give rise to any cause of action against him. It is the defendant's submission that in the context where the impugned words are used it cannot be said to be reasonably capable of referring to the plaintiff and that it is not reasonably capable of bearing a defamatory meaning in the minds of reasonable persons. Having carefully considered the obnoxious passage I am satisfied that the objectionable words are not defamatory in character, even to bring in aid the concept of innuendo, and what is more it is too remote to bear any reference to the plaintiff.

Counsel for the plaintiff refers to O. 15 r. 16 of the Rules of the High Court which says:

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

He claims that a declaration sought under O. 15 r. 16 is not open to objection. I am afraid I do not agree with him for it is an accepted rule of practice that a party must have the necessary *locus standi* before it is allowed to appear and be heard in legal proceedings. Furthermore the power to make a declaration is discretionary and there are decided cases which expound that to qualify for declaration the plaintiff must show not only it is not inequitable for the Court to grant but also it is not contrary to the accepted principle upon which the Court exercises its discretion.

Hashim Yeop Sani CJ (as he then was) in *Government of Malaysia v. Lim Kit Siang* had occasion to say

> O. 15 r. 16 of our Rules of the High Court 1980 cannot be made into a basis of jurisdiction for the Court to entertain an action which is not properly before it.

This is in consonance with what was said by Viscount Dilhorne in *Gouriet v. Union of Post Office Workers & Ors.* [1977] 3 AER 70 that O. 15 r. 16 "does not provide that an action will lie whenever a declaration is sought. It does not enlarge the jurisdiction of the Court. It merely provides that no objection can be made on the ground only that a declaration is sought.

One last submission advanced by Counsel for the plaintiff is that if the defendant chooses, as he, does in his application, to strike out the writ of summons and the statement of claim he should have filed a conditional appearance; now that he has put in an unconditional appearance he is therefore barred from proceeding with the said application.

The effect of conditional appearance is fully explained in **Mallal's Supreme Court Practice** 2nd Edn., para 12/1/3. Such an appearance reserves to the defendant "the right to apply to the Court to set aside the writ or service thereof for an alleged informality or irregularity which renders either the writ or the service invalid.". The position in the instant case is different - the defendant is not challenging the validity of the writ or service thereof but proceeds on the premise that the plaintiff has no *locus standi* to bring the said suit against him, the suit is clearly scandalous, frivolous, vexatious and/or an abuse of the process of the Court as the alleged publication does not amount to defamation or sedition - the allegations do not evince any cause of action against him. In the circumstances I am satisfied that the course of action taken by the defendant is in line with O. 18 r. 19 of the Rules of the High Court 1980 and that the application is made promptly, that is, before service of the statement of defence on the plaintiff.

After viewing the facts and the law I hold that the defendant succeeds in his application and in the event I grant the order in terms of his application. The writ of summons and the statement of claim are therefore struck out. Costs to the defendant.

TUNG LIAN ENTERPRISE

v.

POLY TRADING COMPANY

HIGH COURT, TAIPING
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK JC
[CIVIL APPEAL NO: 12-19-92 (92)]
14 SEPTEMBER 1993

PRACTICE & PROCEDURE: Jurisdiction - Transfer of proceedings - Claim for goods sold and delivered - Breach of contract - Plaintiff filed action at Sessions Court Taiping - Defendant's application to transfer proceedings to Sessions Court Kuala Lumpur dismissed by Sessions Court Taiping - Appeal to High Court - Subordinate Courts Act 1948 - Section 99A, s. 2 of 3rd Schedule.

This was an appeal against the decision of the Sessions Court Taiping which dismissed the application of the defendant/appellant to transfer the proceedings from the Sessions Court Taiping to the Sessions Court Kuala Lumpur.

Held:

[1] A liberal approach should be adopted in construing s. 2 of the 3rd Schedule. The Court should lean in favour of the appellant when applying s. 2 of the 3rd Schedule and not resort to a strict, rigid and dogmatic approach as was done by the trial Court.

[2] The words in s. 2 of the 3rd Schedule are clear and unambiguous and this Court must give effect to them whatever may be the consequences.

[3] This Court shall give effect to s. 2 of the 3rd Schedule in favour of the appellant. The case was ordered to be transferred to the Sessions Court, Kuala Lumpur forthwith.

[Appeal allowed with costs].

Case referred to:

Duport Steel Ltd. v. Sirs [1980] 1 All ER 529 ***(foll)***
Warburton v. Loveland [1832] 2 D & Cl (HL) 480, 489 6 ER 806) ***(refd)***
King Emperor v. Bensari Lal Sarma [1945] 72 IA 57, 70 ***(refd)***

Legislation referred to:

Subordinate Courts Act 1948, s. 99A, s. 2 of the 3rd Schedule